

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”) is made January 8, 2020, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Valley Bank (“FDIC-R”), and Crowe LLP, formerly known as Crowe Horwath LLP, (“Crowe”) (individually, the FDIC-R and Crowe may be referred to herein as “Party” and collectively as the “Parties”).

**RECITALS**

WHEREAS:

Prior to June 20, 2014, Valley Bank (“Bank”) was a depository institution organized and existing under the laws of Illinois;

On June 20, 2014, the Illinois Department of Financial & Professional Regulation – Division of Banking closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed Receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets;

Among the assets to which the FDIC-R succeeded were all of the Bank’s claims, demands, and causes of action against professionals retained by the Bank: arising from the alleged performance, nonperformance, and manner of performance of their respective functions, duties and acts as professionals related to the Bank;

On June 9, 2017 the FDIC-R filed a complaint for money damages against Crowe, who audited the Bank’s financial statements for the years ended December 31, 2010 and December 31, 2011, pursuant to engagement letters with the Bank’s holding company (the “Services”). Those claims for damages are now pending in the United States District Court for the Northern District of Illinois in *Federal Deposit Insurance Corporation as Receiver for Valley Bank v. Crowe Horwath LLP*, Case No. 1:17-cv-04384 (“Action”). Crowe denies liability for the claims.

The Parties engaged in a settlement conference with the Magistrate Judge and agreed to a resolution of the disputed claims; and

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

**SECTION I: Payment to FDIC-R**

A. As an essential covenant and condition to this Agreement, on or before thirty (30) days following the date the Agreement is executed by all Parties, Crowe shall pay the FDIC-R the sum of \$11,250,000.00 ("the Settlement Payment").

B. The Settlement Payment shall be delivered to the FDIC-R by direct wire transfer into an account designated by FDIC-R by written notice to Crowe. In the event that the FDIC-R does not receive the Settlement Payment by the date determined by Section I.A. above, interest shall accrue on the unpaid installments, from the date determined in Section I.A. above until the date of payment, at a rate equal to 1% over LIBOR (as determined on the date payment is due).

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection I.A. above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for the Settlement Payment, including interest accruing from the date determined by subsection I.A. above, through the date of payment at a rate calculated in accordance with Section I.B.; or

2. Enforce this Agreement, in which event Crowe agrees to jurisdiction in the United States District Court for the Northern District of Illinois and Crowe agrees to pay

all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement, move to vacate any dismissal order, to which Crowe agrees to consent, and re-institute an action on the FDIC-R's claims. Crowe further agrees to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims, insofar as that defense is based, in whole or in part, on the passage of time between the dismissal of the Action and the reinstatement of an action on the FDIC-R's claims. Crowe further agrees (a) to waive all objections, defenses, claims or counterclaims, and (b) to covenant and agree not to assert any objections, defenses, claims or counterclaims in both cases to the extent such objections, defenses, claims or counterclaims did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time under Section I.C.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of Settlement Payment in full (including all accrued interest).

#### **SECTION II: Dismissal**

Within ten (10) business days after the receipt of the Settlement Payment in full, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice of all claims in the Action against Crowe, in the form attached hereto as Exhibit A.

#### **SECTION III: Releases**

##### **A. The FDIC-R's Release.**

Upon receipt of the Settlement Payment in full and except as provided in Section I, and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby

releases and discharges Crowe, and its heirs, parents, subsidiaries, affiliates, successors, and assigns, and Crowe's current and former partners, principals, employees, officers, directors, agents, executors, trustees, administrators, representatives, and insurers from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of any and/or all of Crowe's Services, functions, duties, and actions for the Bank, including without limitation the causes of action alleged in the Action.

B. Crowe's Release.

Effective simultaneously with the release granted in Section II.A. above, Crowe, on behalf of itself, and its heirs, parents, subsidiaries, affiliates, current and former partners, principals, employees, officers, directors, executors, trustees, administrators, agents, representatives, attorneys, insurers, successors, and assigns, hereby releases and discharges the FDIC-R, and its current and former employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to, the Bank or Crowe's performance, nonperformance, or manner of performance of any and/or all of Crowe's Services, functions, duties, and actions for the Bank, including without limitation the causes of action alleged in the Action.

C. Exceptions from Release by FDIC-R.

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

- a. (i) Against Crowe for liability, if any, for claims asserted by the Federal Deposit Insurance Corporation as Receiver for any bank other than the Bank; (ii) and/or

incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. Against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or diminishing its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to waive, any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 *et seq.*, if appropriate.

#### **SECTION IV: Waiver of Dividends and Proceeds from Litigation**

To the extent, if any, that Crowe is or was a shareholder of the Bank or its holding company and by virtue thereof is or may be entitled to a dividend, payment, or other distribution upon resolution of the receivership of the Bank or proceeds in any litigation that has been or could be brought against the Federal Deposit Insurance Corporation in any capacity or against the United States based on or arising out of, in whole or in part, the closing of the Bank, or any

alleged acts or omissions by the Federal Deposit Insurance Corporation in any capacity, the United States government, or any agency or department of the United States government in connection with the Bank, its conservatorship, or receivership, Crowe hereby knowingly assigns to the FDIC-R any and all rights, titles, and interest in and to any and all such dividends, payments, or other distributions, or proceeds.

**SECTION V: Representations and Acknowledgements**

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, trustees, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by its counsel.

**SECTION VI: Reasonable Cooperation**

The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to perform the terms of this Agreement.

**SECTION VII: Other Matters**

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Parties subscribed thereto upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Illinois.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and also by email, to the following:

If to the FDIC/R:

Gregory K. Conway  
Christine Hsu  
Federal Deposit Insurance Corporation  
3501 Fairfax Drive  
Arlington, VA 2226-3500

[Redacted]  
[Redacted]

If to Crowe:

Attn: Legal Department  
Crowe LLP  
One Mid America Plaza, Suite 700  
Oak Brook, Illinois 60522-3697  
(630) 574-7878

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

F. Titles and Captions. All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

G. No Confidentiality. The Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements. Similarly, Crowe may disclose this Agreement as required by law or as it deems appropriate in its sole discretion.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

**FEDERAL DEPOSIT INSURANCE CORPORATION AS  
RECEIVER FOR VALLEY BANK**

(b)(6)

Date: 1/8/2020

BY:

[Redacted Signature]

TITLE: Counsel

PRINT NAME: *Christine P. Hsu*

(b)(6)

**CROWE LLP, formerly known as CROWE HORWATH LLP**

Date: 1-8-2020

BY:

[Redacted Signature]

TITLE: Chief Administrative Officer

PRINT NAME: Fred J. Bauters

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>FEDERAL DEPOSIT INSURANCE</b>	)	
<b>CORPORATION AS RECEIVER FOR</b>	)	
<b>VALLEY BANK,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No. 17-cv-4384</b>
	)	
<b>v.</b>	)	<b>Honorable Mary M. Rowland</b>
	)	
<b>CROWE HORWATH LLP,</b>	)	
	)	
<b>Defendant.</b>	)	

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**STIPULATION AND ORDER OF DISMISSAL WITH PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the parties, that the above-entitled action is hereby dismissed, with prejudice and without costs to either party, and that an Order may be entered to that effect.

Dated:

/s/ \_\_\_\_\_  
Susan Valentine  
Lydia A. Bueschel  
VALENTINE AUSTRIACO & BUESCHEL, P.C.  
105 West Adams, 35<sup>th</sup> Floor  
Chicago, Illinois 60603

and

Lawrence H. Heftman  
David C. Giles  
SCHIFF HARDIN LLP  
233 South Wacker Drive, Suite 7100

Chicago, IL 60606

*Attorneys for the FDIC as Receiver for  
Valley Bank*

/s/

\_\_\_\_\_  
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*Attorneys for Crowe LLP*